

AMENDED IN SENATE MARCH 13, 2006

SENATE BILL

No. 1188

Introduced by Senator Florez

January 19, 2006

An act to add Article 1.5 (commencing with Section 865) to Chapter 7 of Division 1 of the Financial Code, and to amend Section 212 of the Labor Code, relating to employment compensation.

LEGISLATIVE COUNSEL'S DIGEST

SB 1188, as amended, Florez. Employment: compensation: *cashing of paychecks.*

Existing law provides for the regulation of banks and other depository institutions by the Commissioner of Financial Institutions, including regulation of federally chartered banks to the extent consistent with federal law. Existing law imposes various requirements on banks and other depository institutions with regard to deposits, checks, and investments.

This bill would prohibit a depository institution that issues paychecks on behalf of a business client from assessing any charge or fee on an individual seeking to cash a paycheck issued by the business client if the paycheck is in payment of wages due, or to become due, or as an advance on wages to be earned. The bill would make a depository institution that violates these provisions, or that causes a business client to violate certain laws relative to the payment of wages, liable for any damages that result to the business client.

Existing law prohibits an employer from issuing, in payment of wages, an acknowledgment of indebtedness, unless it is negotiable and payable in cash, on demand, and without discount at some place of business in the state and meets specified requirements. A violation of this provision is a misdemeanor.

This bill would define “without discount” for purposes of this provision to mean without a fee charged by the bank or place of business at which the acknowledgment of indebtedness is payable.

This bill would prohibit a person from issuing, in payment of wages, an acknowledgment of indebtedness that is payable at a bank or place of business that charges a fee to cash the instrument, unless the person reimburses the employee receiving the wages for that fee. ~~Because~~

Because this bill would change the definition of a crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 *SECTION 1. Article 1.5 (commencing with Section 865) is*
2 *added to Chapter 7 of Division 1 of the Financial Code, to read:*

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4 *Article 1.5. Paycheck Charges*
5

6 865. *A depository institution, as defined in Section 866, that*
7 *issues paychecks on behalf of a business client shall not assess*
8 *any charge or fee on an individual seeking to cash a paycheck*
9 *issued to that individual by the business client if the paycheck is*
10 *in payment of wages due, or to become due, or as an advance on*
11 *wages to be earned by the individual.*

12 865.5. *Any depository institution whose conduct violates*
13 *Section 865, or causes a business client to violate Section 212 of*
14 *the Labor Code, shall be liable for any damages that result to the*
15 *business client.*

16 ~~SECTION 1.~~

17 SEC. 2. *Section 212 of the Labor Code is amended to read:*

18 212. (a) *No person, or agent or officer thereof, shall issue in*
19 *payment of wages due or to become due, or as an advance on*
20 *wages to be earned, either of the following:*

(1) Any order, check, draft, note, memorandum, or other acknowledgment of indebtedness, unless it is negotiable and payable in cash, on demand, without discount, at some established place of business in the state, the name and address of which must appear on the instrument, and at the time of its issuance and for a reasonable time thereafter, which must be at least 30 days, the maker or drawer has sufficient funds in, or credit, arrangement, or understanding with the drawee for its payment.

(2) Any scrip, coupon, cards, or other thing redeemable, in merchandise or purporting to be payable or redeemable otherwise than in money.

(b) Where an instrument mentioned in subdivision (a) is protested or dishonored, the notice or memorandum of protest or dishonor is admissible as proof of presentation, nonpayment, and protest and is presumptive evidence of knowledge of insufficiency of funds or credit with the drawee.

(c) Notwithstanding paragraph (1) of subdivision (a), if the drawee is a bank, the bank's address need not appear on the instrument and, in that case, the instrument shall be negotiable and payable in cash, on demand, without discount, at any place of business of the drawee chosen by the person entitled to enforce the instrument.

(d) A person, or agent or officer thereof, shall not issue, in payment of wages, an instrument that is payable at a bank or place of business that charges a fee to cash the instrument, unless the person reimburses the employee receiving the wages for that fee.

(e) *For purposes of this section, "without discount" means without a fee charged by the bank or place of business at which the instrument described in paragraph (1) of subdivision (a) is payable.*

~~SEC. 2.~~

~~SEC. 3.~~ No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a

- 1 crime within the meaning of Section 6 of Article XIII B of the
- 2 California Constitution.

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